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**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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**In the Matter of**

**Petition of U S West Communications, Inc.  
for Forbearance from Regulation as a  
Dominant Carrier for High Capacity Services  
in the Seattle, Washington Metropolitan  
Statistical Area**

**CC Docket No. 99-1**

**MCI WORLDCOM OPPOSITION**

MCI WORLDCOM, INC.

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**MCI WORLDCOM OPPOSITION**

**I. Introduction and Summary**

MCI WorldCom, Inc. (MCI WorldCom) hereby submits its opposition to the petition for forbearance filed by U S West Communications, Inc. (U S West) on December 30, 1998 in the above-captioned docket. U S West seeks relief from “the Commission’s Part 61 tariff rules as they apply to dominant carriers and any other rules affecting high capacity services which result in different regulatory treatment for dominant and non-dominant carriers” in the Seattle Metropolitan Statistical Area (MSA).<sup>1</sup>

The Commission need not, and should not, conduct a full-scale analysis of the transport market in the Seattle MSA. Instead, the Commission should act immediately to deny U S West’s petition on the grounds that the city-specific relief that U S West seeks would be contrary to the public interest and thus fails to satisfy the Section

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<sup>1</sup>U S West Petition at 1.

10(a)(3) public interest criterion. As the Commission has demonstrated by its recent request that parties update the record in the pricing flexibility phase of the access reform proceeding, the public interest is best served by addressing pricing flexibility issues on a national basis.

If the Commission does proceed to conduct a full-scale forbearance analysis addressing each of the three statutory criteria outlined in Section 10 of the Act, then it must find that U S West's petition fails to satisfy these criteria. As shown below, the Commission's dominant carrier rules (1) remain necessary to ensure that U S West is charging just, reasonable, and not unreasonably discriminatory rates; (2) remain necessary to protect consumers from paying rates that are not just and reasonable; and (3) are consistent with the public interest.

The Commission's dominant carrier rules remain necessary because U S West continues to possess market power in the market for high capacity services in the Seattle MSA. Contrary to U S West's claims of widespread competition, the record shows that U S West's high capacity customers have no alternative sources of supply on the vast majority of routes. U S West thus continues to have the ability to "raise prices above competitive levels and maintain that price for a significant period, reduce the quality of the relevant product or service, reduce innovation or restrict output profitably."<sup>2</sup>

The extent of competition for high capacity services in Seattle -- limited competition on a few routes in the central business district -- is in most respects typical

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<sup>2</sup>See In the Matter of COMSAT Corporation, File No. 60-SAT-ISP-97, Order and Notice of Proposed Rulemaking, rel. April 28, 1998, at ¶67 (Comsat Order).

of metropolitan service areas in general. The rules adopted in the expanded interconnection proceedings, particularly the density zone pricing provisions, were crafted precisely to address the early stages of competition that characterize these metropolitan areas. To the extent that transport competition has advanced beyond the point contemplated by the expanded interconnection orders, which is not the case in the Seattle MSA, any changes to the dominant carrier rules should be considered in CC Docket No. 96-262, not on an ad hoc city-by-city basis.

A narrow focus on particular markets ignores the fact that most IXCs, including MCI WorldCom, do not buy access services only in particular MSAs, but instead purchase access services throughout U S West's region. Under the approach urged by U S West, U S West could selectively decrease access rates in only those markets where it faces competition, while maintaining or increasing already-inflated transport rates elsewhere. Only a national approach can ensure that any pricing flexibility that is granted to the ILECs is consistent with the Commission's overall objective of reducing access charges.

## **II. U S West's Petition Fails the Public Interest Test**

Section 10 allows the Commission 12 months in which to deny a petition for forbearance for failure to meet the requirements of Section 10(a). The Commission should, however, reject U S West's petition immediately for failing to satisfy the public interest test -- the third prong of Section 10(a) -- because the issues raised by U S West

are already being addressed in the pricing flexibility phase of the CC Docket No. 96-262 access reform proceeding.

It is well-established that the “choice between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency.”<sup>3</sup> The Commission has already decided to address the issues raised by U S West’s petition -- the extent to which dominant carrier rules may need to be modified in an environment of evolving competition -- in a general rulemaking. In fact, the Commission specifically asked, in the Access Reform Notice, whether “high capacity services, e.g. those special access services offered at speeds of DS1 or higher, should be removed immediately from price cap regulation.”<sup>4</sup> And the Commission only recently gave interested parties, including U S West, the opportunity to refresh the record in that proceeding.<sup>5</sup>

Given that the Commission has chosen to address pricing flexibility issues by rulemaking, it would not be in the public interest to proceed further with the ad hoc approach requested by U S West. As the Commission has stated, when there are important consequences for the entire telecommunications industry, “the coordinated and comprehensive approach made possible by a rulemaking will reduce industry uncertainty, while ensuring the smoothest possible transition to any new rules that may

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<sup>3</sup>SEC v. Chenery Corp., 332 U.S. 194, 203 (1947).

<sup>4</sup>Access Reform Notice at ¶153.

<sup>5</sup>Public Notice, FCC 98-256, October 5, 1998.

be necessary.”<sup>6</sup> The ad hoc city-specific relief that U S West requests in its petition is obviously inconsistent with such a “coordinated and comprehensive approach.”

On the rare occasions when the Commission has addressed pricing flexibility issues on an ad hoc city-specific basis, it has done so only when there was no general rulemaking underway and after finding, for example, “factors [that] generally distinguish the economic conditions existing in the New York City metropolitan area from other areas in NYNEX’s region.”<sup>7</sup> There is nothing that indicates that competitive conditions in the Seattle MSA -- limited competition on a few routes in the central business district -- can be distinguished from competitive conditions in other metropolitan areas.

Further, immediate denial of U S West’s petition will serve the public interest by allowing the Commission to focus its resources on CC Docket No. 96-262. The Commission would not only avoid the need to conduct a market power analysis for the Seattle MSA, but denial of U S West’s petition would forestall a flood of “me too” petitions from other ILECs. U S West’s Seattle petition is itself a near-copy of U S West’s October 1998 petition for forbearance from dominant carrier rules in the Phoenix MSA, and Bell Atlantic, SBC, and Ameritech have already filed similar petitions.

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<sup>6</sup>In the Matter of AT&T Communications v. MCI Telecommunications Corp., Memorandum Opinion and Order, 7 FCC Rcd 807, 809 (1992).

<sup>7</sup>In the Matter of NYNEX Telephone Companies Petition for Waiver, Memorandum Opinion and Order, 10 FCC Rcd 7445, 7455 (1995).

### **III. The Commission's Dominant Carrier Rules Remain Necessary**

If the Commission does not deny U S West's petition immediately on public interest grounds, but proceeds instead to conduct a full-scale forbearance analysis, such an analysis would show that U S West's petition fails to satisfy Section 10's three-part test. In particular, this analysis would show that the Commission's dominant carrier rules remain necessary to ensure that U S West's high-capacity rates and practices are just, reasonable, and not unreasonably discriminatory, and that U S West's petition therefore fails to satisfy the Section 10(a)(1) and 10(a)(2) criteria.

#### **A. U S West Continues to Possess Market Power in Seattle**

According to Commission precedent, the price cap and dominant carrier tariffing regulations can be eliminated (in the case of price cap regulation) or replaced by less onerous regulation (in the case of tariffing) if a carrier is "non-dominant" (i.e., does not have market power in the relevant market).<sup>8</sup> In determining whether a carrier has market power, the Commission looks at such factors as demand elasticity, supply elasticity, the incumbent's pricing behavior, market share, and differences in cost structures. When these factors are evaluated with reference to high-capacity services in the Seattle MSA, it is clear that U S West continues to possess market power.

##### **1. Supply Elasticity**

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<sup>8</sup>In the Matter of Motion of AT&T Corp to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271 (1995) (AT&T Reclassification Order); Comsat Order.



A key issue in the Commission's market power assessment is whether supply is sufficiently elastic to constrain U S West's unilateral pricing decisions in the provision of high-capacity services, i.e., whether competitors have or could quickly acquire the capacity to take away enough business from U S West to make unilateral price increases by U S West unprofitable.<sup>9</sup> In its petition, U S West's argues that new entrants' existing fiber networks "should be capable of transporting more traffic than the Seattle area will ever generate"<sup>10</sup> and that "U S West's competitors have more than sufficient readily available excess capacity to constrain U S West's pricing behavior."<sup>11</sup>

While CAP fiber rings may have significant theoretical data-carrying capacity, the fact is that CAP networks have only limited geographic scope. On the vast majority of high-capacity routes in the Seattle MSA, the available competitive capacity is zero. In its petition, U S West cites statistics that show that competitors serve only a limited number of buildings in the Seattle MSA: MCI WorldCom with approximately 100 buildings, TCG with approximately 115 buildings, and ELI with approximately 70 buildings.<sup>12</sup> Because some of these buildings are served by more than one CAP network, MCI WorldCom estimates that no more than 200 buildings in the Seattle MSA are

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<sup>9</sup>See AT&T Reclassification Order, 11 FCC Rcd at 3303.

<sup>10</sup>U S West Petition at 26.

<sup>11</sup>Id.

<sup>12</sup>Quality Strategies Report at 20.

connected to a competitor's network, or less than 8 percent of the 2517 high capacity locations in the Seattle MSA.<sup>13</sup>

Consistent with the data showing that CAPs serve only a fraction of the buildings in each MSA, MCI WorldCom has found that competitive alternatives to U S West are available on only a very limited number of routes. MCI WorldCom has been able to obtain some of its DS3 entrance facilities through self-provisioning or from unaffiliated CAPs. However, reflecting the fact that most routes with lower traffic volumes still have no competitive alternatives, U S West still provides over 90 percent of MCI WorldCom's DS1 interoffice and channel termination circuits in Seattle MSA.

Furthermore, U S West still provides 100 percent of the multiplexing purchased by MCI WorldCom in the Seattle MSA. Typically, CAPs cross-connect to U S West facilities at the DS3 level; MCI WorldCom must then obtain DS3/DS1 multiplexing from U S West. CAPs do not offer multiplexing services because the installation of multiplexing equipment and associated cross-connect frames in collocation cages would consume too much floor space to be practical under existing collocation space restrictions.

Recognizing that competitors do not currently provide alternative sources of supply on most routes, U S West attempts to argue that competitors could quickly acquire such a capability. It claims (incorrectly, in MCI WorldCom's view) that

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<sup>13</sup>The Power Engineering study provided with U S West's petition shows 2517 high-capacity locations in the Seattle MSA. U S West Petition, Attachment B, page 3.

competitors can build out to a significant number of high-capacity locations “almost immediately, incurring only minimal costs.”<sup>14</sup>

U S West’s argument -- that CAPs can build out their networks relatively easily, and that supply elasticity is therefore high -- is without basis. First, the Power Engineering cost study provided with U S West’s petition substantially underestimates the cost of adding an additional building to a CAP network. It ignores several categories of costs, including (1) the cost of the add-drop multiplexer or other node used to connect the CAP fiber ring to the building’s fiber link; (2) the cost of inside wiring; (3) building entrance fees that CAPs, but not U S West, typically must pay to building owners; and (4) the inflated costs of collocating in U S West end offices, if the CAP seeks to compete for U S West’s switched transport business. Whereas the Power Engineering study estimates the average cost of adding a building to a CAP network to be \$30,699,<sup>15</sup> when the building is less than 1,000 feet from the CAP’s fiber ring, MCI WorldCom’s experience indicates that the true cost is at least four times greater. Proving in selective expansion of a CAP network is therefore geometrically more difficult than U S West suggests, since a CLEC’s ability to generate revenues from a given building must be commensurate with the cost of serving that building.

Second, U S West substantially underestimates the time required to add a building to a CAP network. Whereas the Power Engineering study focuses only on construction time, and estimates that a location can be added in two weeks, in MCI

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<sup>14</sup>U S West Petition at 27.

<sup>15</sup>Power Engineering Study at 3.

WorldCom's experience the time required to add a new building to its local network is substantially longer -- three months or more. Not only has Power underestimated the construction time, but it has ignored the time required to plan and engineer the new link and the time consuming process of negotiating rights-of-way, obtaining necessary permits, and negotiating with building owners.

Third, U S West makes the unrealistic assumption that CAPs would devote a disproportionate share of their resources to the Seattle market. CAPs are simultaneously trying to establish themselves in many other local markets, all of which are dominated by the incumbent LEC. On a national scale, massive amounts of capital would be necessary for CAPs to build out their networks sufficiently rapidly to constrain ILEC high-capacity pricing in all of these cities. U S West's claim that CAPs can build out their networks sufficiently rapidly to constrain U S West's high capacity pricing in Seattle therefore appears to rest on an assumption that CAPs would devote a disproportionate share of their resources to the Seattle market. This narrow focus on the Seattle market illustrates the dangers of analyzing the issues raised by U S West on a city-by-city basis rather than in a comprehensive rulemaking.

It is noteworthy that U S West's analysis of supply elasticity assumes that new entrants will have to provide service using an exclusively facilities-based strategy. The Telecommunications Act of 1996 provided for alternative market-entry paths that, in theory, could accelerate entry into the high-capacity market. A competitor could, for example, use unbundled loops and collocated transmission equipment in providing competitive DS1 special access services. But collocation space and unbundled loops

that U S West has priced well above forward-looking economic cost, coupled with the lack of functional OSS, have limited competitors to the capital-intensive and time-consuming path of facilities-based entry.

In no respect is the supply elasticity for high-capacity services in the Seattle MSA comparable to the supply elasticity the Commission found in the AT&T or Comsat nondominance proceedings. In the AT&T nondominance proceeding, the record showed that AT&T's competitors could immediately absorb 15 percent of AT&T's total switched demand, could absorb one-third of AT&T's capacity with existing equipment, and could absorb two-thirds of AT&T's capacity within a year after investing only \$660 million.<sup>16</sup> By contrast, U S West's competitors currently serve only a fraction of U S West's high capacity locations, can absorb zero demand on most routes, can provide service to additional locations only by constructing new facilities, and can address a significant fraction of U S West's high capacity market only by making investments that are prohibitive.

It is clear, therefore, that the high capacity market in the Seattle MSA is subject to an inelastic competitive supply, which requires customers to use U S West's high-capacity services on the vast majority of routes. Competitive networks are in the early stages of their development, and are therefore unable to constrain U S West's pricing of high-capacity circuits and multiplexing or to constrain U S West's ability to discriminate unreasonably in the provision of high-capacity facilities.

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<sup>16</sup>AT&T Reclassification Order, 11 FCC Rcd at 3303.

## **2. Demand Elasticity of U S West's Customers**

U S West argues that customers for high-capacity services in the Seattle MSA are highly demand elastic, and will switch carriers in order to obtain price reductions and desired features. U S West points out that high capacity transport services are sold predominantly to telecommunications carriers, large corporate end users, and other sophisticated buyers.

While MCI WorldCom and other access customers are obviously eager to find alternatives to U S West's transport services, a finding of high demand elasticity requires that U S West's customers not only be willing to switch suppliers, but also that they have the ability to do so.<sup>17</sup> High-capacity customers in the Seattle MSA currently have only a limited ability to switch suppliers. First, as discussed above, alternative sources of supply are simply unavailable on every route. Second, excessive termination liabilities and inflated nonrecurring charges combine to severely restrict access customers' ability to switch suppliers, even on the limited number of routes where CAPs provide an alternative.

U S West admits in its petition that over 70 percent of its high capacity revenues are subject to term agreements.<sup>18</sup> The substantial fraction of transport demand that is covered by U S West term plans is effectively out of competitors' reach. In many cases, customers entered into term plans prior to the passage of the 1996 Act, based on

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<sup>17</sup>See, e.g., Comsat Order at ¶71 ("High firm demand elasticity indicates that customers are willing and have the ability to switch to another service provider in order to obtain price reductions or desired features.").

<sup>18</sup>U S West Petition at 24.

reasonable predictions of the likely evolution of competition and U S West pricing under pre-1996 Act and pre-access reform rules. Term plans were one of the few tools available to customers seeking to avoid a portion of the ILECs' excessive non-cost-based switched transport and special access rates.

Because much of U S West's high-capacity demand is locked up in term plans, the Commission cannot find that high demand elasticity exists in the Seattle MSA. U S West's competitors are at a severe disadvantage because they are competing only for new growth or that portion of U S West's high-capacity business that is not locked up in term plans. Competitors are therefore limited in their ability to "prove in" additional routes, expand their networks, and develop economies of scale. While competitors offer service on only a limited number of routes, the ILECs can structure volume discounts based on their ability to aggregate customer circuits on all routes.

### **3. U S West's Pricing Behavior**

The Commission has, on various occasions, examined the incumbent's pricing behavior to determine whether such pricing behavior was consistent with declining market power. In the AT&T nondominance proceeding, for example, the Commission noted that AT&T's Basket 1 API was 6.2 percent below the PCI.<sup>19</sup>

U S West's pricing behavior is consistent with a carrier that continues to possess market power. First, U S West continues to price its trunking basket services at the maximum permitted by the price cap rules. Any declines in U S West's high capacity

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<sup>19</sup>AT&T Reclassification Order, 11 FCC Rcd at 3314.

rates have thus been due not to the effects of competition, as U S West claims, but solely due to the operation of the X-Factor. Indeed, in the most recent annual access filing, when the Commission's rules required U S West to target all X-Factor reductions to the Transport Interconnection Charge (TIC),<sup>20</sup> and none to the High-Cap service categories, U S West actually increased its interstate high-capacity rates.<sup>21</sup> Obviously, these price increases are inconsistent with U S West's claims of growing competition. There is absolutely no evidence that the cost of providing high-capacity services is increasing; indeed, there is substantial evidence that the cost of providing high-capacity services is declining.<sup>22</sup>

Second, U S West has utilized little of the zone pricing flexibility that it has been granted by the Commission. With one very limited exception, U S West charges the same rates for high-capacity services in the presumably more competitive Zone 1 as in the other two zones.<sup>23</sup> U S West's failure to use the pricing flexibility that it has been granted is also inconsistent with its claims of growing competition in the Seattle MSA.

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<sup>20</sup>47 C.F.R. §61.47(I).

<sup>21</sup>In the most recent annual filing, U S West's DS-1 subcategory SBI increased from 80.7337 to 85.1531, while its DS-3 SBI increased from 86.5631 to 101.2373. U S West Tariff F.C.C. No. 5, Transmittal No. 928, June 29, 1998, Chart IND-1, columns (C), (G).

<sup>22</sup>The growing use of HDSL technology is reducing the cost of provisioning DS1 circuits. See Fiber Deployment Update - End of Year 1997, Industry Analysis Division, at 20; Table 8.

<sup>23</sup>U S West has different zone rates for DS1 channel terminations, but DS1 mileage rates and all DS3 rates are the same in all three zones.



Furthermore, U S West's service quality is declining. As shown by U S West's ARMIS 43-05 Service Quality reports, U S West's service quality declined substantially between 1996 and 1997. Whereas in 1996 U S West's average installation interval for switched access circuits was 18.8 days, in 1997 the average installation interval was almost twice as long -- 32.7 days.<sup>24</sup> Similarly, the average installation interval for special access circuits increased by 50 percent, from 14.2 days to 22.1 days.<sup>25</sup> The decline in service quality shown by U S West's ARMIS 43-05 reports is consistent with MCI WorldCom's experience as a U S West customer, and is inconsistent with U S West's contention that competition for high capacity services in Seattle is increasing.

#### **4. Market Share**

U S West cites a variety of market share statistics in support of its argument that it no longer dominant in the provision of high capacity services in Seattle. However, the market share measures cited by U S West are either meaningless or misleading.

First, U S West places great weight on a statistic it describes as the "retail" market share for high-capacity services.<sup>26</sup> The "retail" market to which U S West refers apparently consists of high capacity services ultimately purchased by end users, both high capacity facilities sold directly to end users by U S West or a CAP and special access facilities provided to end users by IXC's. U S West claims that it has only a 20

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<sup>24</sup>ARMIS 43-05, col. aa, row 121.

<sup>25</sup>Id., row ac.

<sup>26</sup>U S West Petition at 19, 22.

percent market share of the “retail” market, with the remaining 80 percent provided to end users by IXC’s or CAP’s.

This market share figure is meaningless. Nearly all of the 80 percent market share that U S West attributes to “competitors” consists of U S West circuits that end users have ordered from IXC’s (rather than directly from U S West). It has always been true that most ILEC special access circuits are ordered from the IXC, rather than from the ILEC. Most customers look to the IXC to provision an end-to-end arrangement since the transaction costs associated with obtaining access and long distance separately are not insubstantial. The fact that an end user may order a U S West circuit from an IXC does not transform the IXC into a competitor in the special access market or demonstrate a decline in U S West’s market power. In fact, according to U S West’s logic, it had “lost” most of the “retail” market for high-capacity services even before a single CAP network was built in the Seattle MSA.<sup>27</sup>

U S West contends that the practice of ordering special access circuits from the IXC rather than directly from the ILEC is significant because resellers can exercise pricing discipline.<sup>28</sup> This is not true of IXC’s role in providing high-capacity services. The IXC is, in most respects, simply acting as an agent for the end user, not exploiting

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<sup>27</sup>MCI WorldCom estimates that circuits ordered from IXC’s represent approximately 85 percent of U S West’s interstate high-capacity revenues. U S West’s TRP shows approximately \$500 million in annual “DDS and High-Cap revenues” (SUM-1, line 200); U S West’s most recent USF-related PCI adjustment filing shows \$85 million in “DDS and High-Cap” end user revenues (Transmittal No. 945, Workpaper 1, page 2).

<sup>28</sup>U S West Petition at 20.

differences between high volume and low volume rates in the same manner as resellers in the interexchange and wireless markets. The Commission has, in any event, never found the longstanding practice of ordering special access circuits from IXC's to be of any competitive significance.

The other market share statistics cited by U S West, which correctly treat IXC's as customers rather than competitors, show that U S West continues to dominate the provision of high-capacity services in Seattle. According to U S West, it has an overall 72.8 percent share of the "high-capacity market" in the Seattle MSA. U S West reports that it controls 65 percent of the "provider market" (i.e., high capacity services ultimately purchased by end users), 72 percent of the "wholesale market" (i.e., high capacity circuits sold to IXC's), and 74 percent of the "transport market" (i.e., high capacity circuits sold to IXC's for transport services).<sup>29</sup>

Even these figures tend to understate the degree to which U S West dominates the provision of high capacity services. U S West's market share figures are expressed in "DS1 equivalents," an approach that has the effect of attributing greater share gains to CAPs than if a revenue-based market share measure is used. The "DS1 equivalent" measure overstates CAPs' competitive inroads because it weights the type of facility for which ILECs have faced some competition — DS3 entrance facilities — more heavily than if a revenue measure were used. When measured on a circuit basis, a DS3 entrance facility circuit counts the same as 28 interoffice DS1s or DS1 channel terminations. But

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<sup>29</sup>Quality Strategies Report at 5.

when measured on a revenue basis, entrance facilities are much less significant.<sup>30</sup> “DS1 equivalent” market share measures obscure U S West’s continued dominance of the more significant (in revenue terms) multiplexing, interoffice transport, and channel termination elements. Even if it is true that U S West’s overall market share is 72.8 percent on a DS1-equivalent basis, it is likely that U S West’s overall Seattle MSA share is over 85 percent when measured on a revenue basis. In the Seattle MSA, U S West currently receives over 85 percent of MCI’s high-capacity access payments.

Regardless of whether a DS1-equivalent or revenue market share measure is used, U S West’s market share in the Seattle high capacity market is inconsistent with U S West’s claim of lost market power. Even the 72.8 percent DS1-equivalent market share figure is substantially higher than AT&T’s share of the long distance market when the Commission found AT&T to be non-dominant. In the AT&T Reclassification Order, the Commission found that AT&T’s market share had fallen to 55.2 percent in terms of revenues and 58.6 percent in terms of minutes.<sup>31</sup>

## **5. Cost Structure, Size and Resources**

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<sup>30</sup>The fixed per-DS1 cost of a DS3 is significantly less than the cost of a DS1. Furthermore, interoffice circuits also incur substantial mileage charges.

<sup>31</sup>AT&T Reclassification Order, 11 FCC Rcd at 3307. MCI WorldCom is not suggesting that 55.2 percent is an appropriate indicator of reduced market power in the access market. The Commission recognized in the AT&T Reclassification Order that a 55 percent market share was “not incompatible” with a competitive market only “in markets with high supply and demand elasticity.” AT&T Reclassification Order, 6 FCC Rcd at 5890 ¶51. Given the highly route-specific nature of competitive alternatives in the access market, and the correspondingly inelastic supply, a 55.2 percent market share figure would be an indicator of continued ILEC dominance of the access market.

As the incumbent provider of high-capacity services in the Seattle MSA, U S West enjoys several cost advantages. First, as the Commission has observed, CAPs are attempting to enter a market that is dominated by the incumbent provider, and may not have attracted a sufficient amount of business to achieve economies of scale.<sup>32</sup>

Second, one of the most important factors inhibiting CAPs from expanding their networks to serve additional buildings is the refusal of most landlords to allow CAPs to provide service in their building without payment of compensation — compensation that is almost never demanded from the ILEC. This places CAPs at a competitive disadvantage in terms of the cost of providing service. Furthermore, the CAPs must make a difficult decision regarding the allocation of scarce capital. Ideally, given the necessity of paying building owners, the CAP would prefer to make the commitment to enter a building only after obtaining contracts to provide service to customers in that building. But given that the process of obtaining authority to enter a building after signing up a new contract may take months, CAPs may risk capital by committing to certain buildings prior to having a signed customer contract. Others will wait for the customer contract, but the resulting lengthy time for delivery of service will make the sales efforts more difficult.

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<sup>32</sup>In the Matter of Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Order Concluding Investigation and Denying Application for Review, 12 FCC Rcd 19311, 19337 (1997) (SWBT RFP Tariff Rejection Order).

**B. Dominant Carrier Regulation is Necessary to Ensure that U S West's High Capacity Rates and Practices are Just, Reasonable, and Not Unreasonably Discriminatory**

In order to satisfy the first statutory criterion of Section 10, U S West is required to demonstrate that application of the Commission's price cap, tariffing, and rate averaging rules is not necessary to ensure that its rates and practices are just, reasonable, and not unreasonably discriminatory. Because, as discussed above, U S West continues to possess market power in the provision of high-capacity services in the Seattle MSA, the Commission should conclude that U S West has failed to satisfy the Section 10(a)(1) criterion. The Commission has previously found that its price cap rules (or other forms of rate regulation) and dominant carrier tariff rules are necessary as long as a carrier possesses market power.<sup>33</sup>

It is clear that the Commission's price cap and tariff rules remain necessary to ensure that U S West's rates are just and reasonable. Because there are no competitive alternatives on the vast majority of high-capacity routes in the Seattle MSA, U S West has the ability and incentive to charge rates that are not just and reasonable on these routes. To prevent U S West from overcharging access customers, the Commission must continue to apply its price cap rules.<sup>34</sup> The Commission must also continue to apply its dominant carrier tariff rules; the tariff rules' advance notice and cost support

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<sup>33</sup>Comsat Order at ¶144.

<sup>34</sup>In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, 6787 (1990).

requirements permit U S West customers and the Commission to challenge potentially unlawful rates before they become effective.<sup>35</sup>

Similarly, the rate averaging requirements remain necessary to ensure that U S West's rates for high capacity services in the Seattle MSA are not unreasonably discriminatory. Absent the rate averaging requirement, U S West could offer rates on routes that are subject to competition that are not generally available to similarly situated customers on routes not subject to competition. The Commission has previously found that such practices are unreasonably discriminatory in violation of Section 202(a) of the Act.<sup>36</sup>

**C. Dominant Carrier Regulation is Necessary for the Protection of Consumers**

In order to satisfy the second statutory criterion of Section 10, U S West must demonstrate that application of the Commission's price cap, tariffing, and rate averaging rules is not necessary for the protection of consumers. Because the record shows that, absent regulation, U S West would have the ability and incentive to charge access rates that are not just and reasonable or are unreasonably discriminatory, and thus increase prices and distort competition in the interexchange market, the Commission's dominant carrier regulations remain necessary for the protection of consumers.

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<sup>35</sup>Comsat Order at ¶153.

<sup>36</sup>In the Matter of Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Memorandum Opinion and Order on Reconsideration, 13 FCC Rcd 6964, 6965 (1998).

**V. Conclusion**

The Commission should act immediately to deny U S West's petition for forbearance on the grounds that the city-specific relief that U S West seeks would be contrary to the public interest and thus fails to satisfy the Section 10(a)(3) public interest criterion. If the Commission proceeds instead to conduct a full-scale forbearance analysis, then it should find that U S West continues to possess market power in the Seattle MSA and that the Commission's dominant carrier rules are necessary to ensure that U S West's high-capacity rates and practices are just, reasonable, and not unreasonably discriminatory.

Respectfully submitted,  
MCI WORLDCOM, INC.



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February 18, 1999



STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on February 18, 1999.



---

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## CERTIFICATE OF SERVICE

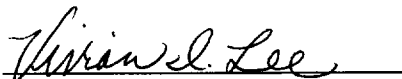
I, Vivian I. Lee, do hereby certify that copies of the foregoing Opposition were sent via first class mail, postage paid, to the following on this 18th day of February, 1999.

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